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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

IN RE:	:	
Fosamax Products Liability Litigation	:	1:06-md-1789 (JFK)
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<i>This Document Relates to:</i>	:	
Juan M. Vasquez, et al.	:	
v. Merck & Co., Inc.	:	
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Case No: 1:07-cv-7295-JFK	:	
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USDC SDNY
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STIPULATION AND ORDER OF DISMISSAL WITHOUT PREJUDICE

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Ted E. Werner in the above-captioned case and Defendant Merck & Co., Inc., ("Merck") through their respective undersigned counsel, as follows:

1. This case having been resolved upon the agreement of the Plaintiff in the above-captioned case to voluntarily dismiss without prejudice his claim against Merck and the agreement of Merck not to seek from Plaintiff its fees and costs. The following Plaintiff Ted E. Werner is hereby dismissed from the above-captioned case without prejudice pursuant to Fed. R. Civ. P. 41(a)(1).

2. The above-named Plaintiff agrees that, in the event he re-files any suit based on any similar claims related to Fosamax against Merck, any of Merck's subsidiaries, agents, distributors, employees, sales representatives, or against any pharmacy, such lawsuit will be filed in this Court, without joining any party whose joinder would defeat diversity pursuant to 28 U.S.C. § 1332.

3. The above-named Plaintiff further agrees that in the event he re-files such lawsuit, any discovery that has taken place or will take place in *In re Fosamax Products Liab. Litig.* (MDL-1789), the MDL proceeding that has been established in the United States District Court for the Southern District of New York, and that is not specific to a particular plaintiff, can be used in any such lawsuit re-filed by the above-named Plaintiff as though he had been a party and had an opportunity to participate in that discovery.

4. The above-named Plaintiff agrees to the stated conditions herein and wishes to dismiss the instant lawsuit without prejudice to re-filing. There are no counterclaims or third-party claims.

5. Each party is to bear its own costs and attorneys' fees.

WHEREFORE, the above-named parties hereto stipulate to the dismissal of the above-named Plaintiff without prejudice to re-filing, subject to the conditions stated herein.

Dated April 20, 2008

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SO ORDERED:

J. F. Keenan
Hon. John F. Keenan

5/14/08